IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1148 of 1995
with
CRIMINAL APPEAL No 144 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHOHAN @ SHATTI RAMSING MARWADI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1148 of 1995
MR SR DIVETIA for Petitioner No. 1
MR AJ DESAI Ld. APP for Respondent No. 1
2. Criminal Appeal No. 144 of 1996
MR SR DIVETIA for Petitioner No. 1
MR AJ DESAI Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 23/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE N.G.NANDI)

1. These two appeals under Section 374 (2) of the Code of the Criminal Procedure (for short "the Code) are directed against the judgment and order convicting original accused no.1 - Ramesh Harjibhai Bhil and original accused no.2 -Shohan @ Shatti Ramsing Marwadi for the offences under Section 302 read with Section 34 of the Indian Penal Code and imposing sentence to suffer imprisonment for life in Sessions Case No.8 of 1994 by the City Sessions Court, Ahmedabad. By the said judgement, original accused no.3 - Kishore Ramchandra Bhaiya came to be acquitted of the charges levelled against him.

2. Facts leading to the filing of these two criminal appeals shortly stated are that deceased Narandas Sevandas Sindhi was residing at Block No.10, Anandgali, Thakkarbapa Nagar along with his wife, brother - Murli and mother Kaushlyaben; that complainant Suresh @ Kalu Pritamdas Sindhi has also been residing in Block No.67/3 in Anandgali; that on 7.10.1993, at about 11.00 O'clock in the night, Narandas went to lorry of one Tolaram Motumal for having snacks; that complainant Suresh @ Kalu also happened to be there near the snacks lorry; that at that time Ramesh Bhil came to said lorry; that some quarrel took place between Narandas and Ramesh Bhil on some money matters; that thereafter they went away; that quarrel between Narandas and Ramesh Bhil led to the filing of complaint, Exh.51, by Ramesh Bhil against Narandas which came to be registered at about 2.30 O'clock in the early hours on 8.10.1993. It is the say of the prosecution that thereafter Narandas came to the shop called "Bhawani Doodhghar" and slept on the otta of the said shop; that at about 5.00 O'clock in the early morning 3 persons came, one held legs of Narandas and two others inflicted knife blows on the person of Narandas; that after receiving injuries, Narandas came to the house of Suresh @ Kalu and knocked at his doors and told him that he has been injured by Ramesh Bhil and Shohan, and that third person Kishore Ramchandra had held his legs, and so saying, he feel down near the door of the house of Suresh Kalu; that at that time Narandas was profusely bleeding; that thereupon Suresh went to the house of Narandas and informed his family members about Narandas having received injuries; that mother Kaushlyaben and

brother Murli of Narandas came rushing to the place of Suresh and on asking, Narandas is stated to have told his mother Kaushlyaben and brother Murli that while he was sleeping on the otta of Bhawani Doodhghar, Kishore held his legs and Ramesh Bhil and Shohan inflicted knife blows on him; that thereafter Narandas was removed to Shardaben Hospital in auto rickshaw and upon reaching the Hospital, doctor declared Narandas dead; that thereafter vardhi was sent from Shardaben Hospital to Naroda Police Station; that the police came to the Hospital and inquest panchnama was drawn on the dead body of Narandas. Thereafter, Suresh @ Kalu gave complaint about the occurrence in Shardaben Hospital. The offence was registered at No.I 334 of 1993 at Naroda Police Station; that thereafter usual investigation started and on completion of the investigation, charge-sheet came to be filed against all the three accused persons, and accused committed to the Court of Sessions to stand trial of the accusations levelled against them. The accused persons denied the charge levelled against them and claimed to be tried, and the prosecution in order to bring the guilt home to the accused adduced oral as well as documentary evidence; that thereafter statements of the accused under Section 313 of the Code were recorded as regards the circumstances emerging from the prosecution evidence incriminating against the accused persons. The defence is that of total denial. The learned trial Judge appreciating oral as well as documentary evidence and also considering the statements of the accused under Section 313 of the Code found accused nos.1 and 2 guilty of the charges levelled against them and convicted both the accused for the offence under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life while acquitting accused no.3 Kishore @ Ramchandra Bhaiya. The conviction recorded and sentence imposed against original accused no.1 Ramesh Harjibhai Bhil has been assailed by filing Criminal Appeal No.1148 of 1995, whereas the conviction recorded and sentence imposed against Shohan @ Shatti Ramsing Marwadi has been assailed by filing Criminal Appeal No.144 of 1996. It may be noted here that acquittal recorded in favour of accused no.3 Kishore Ramchandra Bhaiya has not been challenged by the State by filing acquittal appeal.

3. It has been mainly argued by Mr.S.R.Divetia, learned advocate for the appellants - convicts in both the appeals that according to post-mortem report, Exh.20, and evidence of PW-8 Dr. Kothari, the deceased had as many as 8 external injuries and 4 internal injuries and looking to the nature of injuries, the lungs of the

deceased were cut and the deceased could not have survived and could not have covered the distance upto the house of PW-1 and could not have made the statement to PW-1 and then before PW-3 and PW-7. It is further submitted that the guilt against the appellants convicts is not proved as PW-1 and PW-2 have not supported the prosecution and they have been declared hostile. As against this, it is submitted by Mr.A.J.Desai, learned APP that as per the Map, Exh.25-A and Panchnama pertaining to the place of incident at Exh.27, the distance between the place of occurrence and the house of PW-1 is 57 feet and at the place of occurrence as well as at the house of PW-1, the blood of the deceased is found; that according to the evidence of PW-1 the house of deceased Narandas is at a distance of about 2 minutes as there are about 15 to 20 houses intervening the house of PW-1 and the deceased, and that within 5 minutes one can return to the house of PW-1 after informing family members of deceased Narandas. It is further submitted that the medical evidence and the FSL Report, Exh.22, corroborates the prosecution version inasmuch as the blood sample taken from the place of occurrence suggests the human blood of "B" group which tallies with the blood as group of the deceased, whereas the Panchanama of the clothes, Exh.43, for recovery of Muddamal Article nos.11 and 12 suggest the blood stains of "B" group. It is further contended that the muddamal weapons i.e. two knives recovered at the instance of accused nos.1 and 2 as per the Panchanam, Exh.49, suggests the human blood of "B" group. Thus, clothes of the deceased and the weapons contained the blood similar to that of the deceased. It is further submitted that the medical evidence does not suggest that the deceased could not be walked the distance of 57 feet and made the statement before PW-1, PW-3 and PW-7.

4. It is not disputed that in the incident which took place at about 5.00 a.m. on 8.10.1993, Narandas received injuries and succumbed to the said injuries while being taken to Shardaben Hospital. The evidence of PW-8 Dr.Kothari, who performed the post-mortem on the dead body of Narandas, prepared the P.M.Report, Exh.20, and noted the internal as well as external injuries noticed in course of the P.M.Examination. The evidence of PW-8 suggests that injuries found on the person of deceased were possible by muddamal article nos.9 and 10; that external injuries nos.1, 7 and 8 are possible by knife muddamal article no.9, whereas external injuries nos.2,3,4,5,6,7 and 8 could be possible by muddamal article no.10; that in the ordinary course of nature, injury nos.2,3,4 and 5 were sufficient to cause death of

the victim. Thus, it is sufficiently suggested from the evidence of PW-8 and the P.M.Notes, Exh.20, that Narandas died a homicidal death on account of injuries received in the incident which took place in the early hours of 8.10.1993.

5. As far as the occurrence is concerned, evidence of PW-1 - Complainant Suresh @ Kalu suggests that he stays in Block No.67/3 in Anandgali, Thakkarbapa Nagar and that he is also known as Kalu; that on 8.10.1993 at about 5.00 O'clock in the morning Narandas came to his house and knocked at his doors shouting 'save, save'; that the witness opened the door on his house and found Narandas pressing his hands of his abdomen with bleeding; that Narandas told the witness that Ramesh Bhil has inflicted injury and has run away; that thereafter witness went to the house of Narandas to call his mother; that mother, brother and wife of Narandas came to the house of witness and thereafter Narandas was removed to Sharadaben Hospital; that he gave the complaint Exh.16 about the occurrence. This witness has been declared hostile and the cross-examination on behalf of the prosecution suggests that the mother, brother - Murli and wife of Narandas came to house of witness and Narandas told them about the incident. The witness thereafter has been confronted with his previous statement and contradictions suggested to the witness. The witness has admitted that out side his house there was blood of Narandas. It has also been admitted that there are 15 to 20 houses between the house of the witness and that of Narandas and if one goes running from the house of the witness, he would reach the house of Narandas within 2 minutes and that he took 5 minutes to go and come back from the house of Narandas informing about the incident, and that there was a talk about the incident between Narandas, his mother Kaushlyaben and Murli.

As far as the evidence of PW-1 is concerned, in his examination-in-chief he only referred to accused no.1 involved in the incident named by Narandas but, in the cross-examination on behalf of prosecution when confronted with his previous statement, it is suggested that accused nos.2 and 3 were also named by Narandas involved in the incident. The evidence of PW-3 Kaushlayaben mother of the deceased Narandas suggests that on 8.10.1993 at about 5.00 O'clock in the morning Kalu knocked at the door of her house and told the witness that Narandas has received injuries with Gupti, whereupon the witness with her other son Murli and the wife of Narandas came to the house of Kalu where Narandas was found lying; that she asked Narandas as to what had

happened and Narandas told her that Ramesh has caused injuries, also stating that when he was sleeping on the otta, out of 3 persons one person gave injury with knife and the other person on his back; that in the cross-examination on behalf of the prosecution PW-3 stated that when she reached the house of Kalu, Narandas was bleeding and lying in injured condition. It is admitted that on asking about the incident, Narandas told the witness that at night he was sleeping on the otta of Bhavani Doodhghar, at that time Kishore held him by legs and Ramesh Bhil inflicted injury with knife on chest and on the left elbow and Shohan with his knife inflicted 3 blows on the abdomen; that Ramesh Bhil also inflicted knife injury on the right hand. In the cross-examination by the defence the witness has denied suggestion that the distance between her house and that of Kalu is of 4 kms. Nothing substantial has been brought out from the cross-examination of this witness so as to discredit her.

The evidence of PW-7 Murli suggests that on 8.10.1993 at about 5.00 O'clock in the morning Kalu came running to his house and informed that Narandas has been injured by somebody, whereupon the witness along with his mother, wife of Narandas and Bhagwan rushed to the house of Kalu; that his brother Narandas was seen lying near the house of Kalu; that his mother asked his brother Narandas as to what happened, whereupon the brother told that Ramesh Bhil, Shatthi and Kishore has inflicted knife injury on him; the witness heard the same; that Narandas gave the name of Ramesh Bhil, Sohan @ Shatti and Kishore Bhaiya as the assailants; that thereafter Narandas was removed to Shardaben Hospital; that while being taken to Rickshaw Narandas was alive and was referring to names of these 3 persons; that it took 20 to 25 minutes to reach Hospital and on reaching Hospital, the doctor declared Narandas dead; that on the night previous to the death of Narandas, quarrel had taken place between his brother Narandas and Ramesh Bhil and after the quarrel Narandas had come to the house and informed about the said quarrel.

6. It is suggested from the evidence of PW-5 Bhagwandas that he stays in Block No.210/A/4 in Anandgali, Thakkarbapa Nagar; that on 8.10.1993 at about 5.00 a.m. while he was preparing to go to Asharambapu Ashram at that time two boys came to the house of Narandas and shouted that Narandas has a quarrel; that the house of Narandas is opposite to the house of the witness; that mother of Narandas told the witness to accompany her, whereupon the witness accompanied mother of Narandas and found Narandas lying in injured condition

with profused bleeding; that Narandas told his mother that Ramesh has caused injury to him. This witness was declared hostile in cross-examination by the prosecution. The witness has been confronted with his previous statement.

7. Coming to the question whether Narandas could have walked the distance from the place of incident to the house of PW-1 and whether Narandas could have made the statement to PW-1 and thereafter, to PW-3 and PW-7 with 8 external injuries and 4 internal injuries as noted in the P.M.Report, Exh.20 and deposed by PW-8.

8. The evidence of PW-8 Dr. Kothari, who performed the post-mortem on the dead body of Narandas, suggests that after inflicting injuries nos.2,3 and 4 a person may not go in coma; that if the bleeding is slow then the victim may survive for half an hour; that the injuries would cause immediate bleeding; that the injuries nos.2,3,4 and 5 would result into bleeding going in the cavity and that due to loss of blood on account of receipt of injuries, BP and pulse would start falling. In answer to the question put by the Court it has been stated that after injuries nos.2 to 5 the victim would be able to talk. It is further suggested that due to shock and hemorrhage the victim may die immediately but if the shock is due to pain then the patient would die immediately. That because of the pain the patient can have vaso vagal shock and that due to vaso vagal shock heart collapses immediately. In answer to the question put by the Court witness has stated that because of the injuries nos.1 to 8 the patient did not suffer vaso vagal shock. It is pertinent to note that it is not suggested from the cross-examination of PW-8 that the patient would not survive for half an hour after the receipt of the injuries nor it is suggested from the evidence of PW-8 that the patient would not be able to walk upto the distance of 50 to 60 feet. The blood is found from the place of incident as well as near the house of PW-1 as per Exh.27 were tally with the blood of deceased as per Exh.22 which suggests that the deceased did cover the distance of 57 feet from the place of occurrence to the house of PW-1. Thus it can not be said from the medical evidence that on the receipt of the injuries Narandas must have instantaneously succumbed to the injuries and that he would not be in a position to speak anything.

9. Exh.25-A is the Map pertaining to the place of incident. Perusal of the same suggests that the distance between Bhawani Doodhghar and the house of PW-1 is 57 feet. Exh.27 is the Panchnama pertaining to the place of

occurrence. It is suggested therefrom that there are two shops called "Bhawani General Stores" and "Bhawani Doodhghar" in Anandgali in Thakkarbapa Nagar, and the place of incident is shown to be the otta of the shop of Bhawani Doodhghar. It is further suggested that on the otta of Bhawani Doodhghar blood was found in the circumference of 1 feet, and the blood sample was collected from the said otta. It is also suggested from Map, Exh.25-A that to the west of place of occurrence i.e. otta of Bhavani Doodhghar at a distance of 57 feet there is house no.67/3 in Anandgali; that 67/3 is the house of PW-1 as suggested from the evidence of PW-1. Thus, it will be seen that the distance between place of occurrence and house of PW-1 is 57 feet.

As seen above, the medical evidence does not suggest that Narandas could not have walked the distance of 57 feet after receiving the injuries in the incident. Exh.27 suggests that on the otta of house No.67/3 and on the kachha road below otta blood was found. The blood was seen in the water which had logged near this otta. It is suggested from the evidence that the deceased was a well built person and in absence of any medical evidence to the effect that the victim receiving injuries noted in the P.M.Report Exh.20 cannot walk it cannot be said that the deceased could not have walked the distance of 57 feet from the place of occurrence to the house of PW-1.

10. As far as deceased making statement to PW-1, PW-3 and PW-7 is concerned, it is suggested from the evidence of PW-1 that deceased made a statement implicating accused no.1 in the first instance and then in the cross-examination by prosecution confronted with his previous statement implicating accused no.2. The evidence of PW-1 suggests that the house of Narandas is at a distance of 2 minutes if a person goes running and that the witness returned within 5 minutes after informing PW-3 and PW-7, and that there are 15 to 20 houses between the house of PW-1 and the deceased. The evidence of PW-7 suggests that the distance between the house of deceased and the witness is 150 to 200 feet. Thus, it will be seen that the distance between the house of PW-1 and PW-3, PW-7 is not such which cannot be covered in a short time. Under the circumstances, it can well be said that PW-3 and PW-7 must have within couple of minutes reached the house of PW-1 on receipt of the information from PW-1 about the injuries sustained by Narandas.

11. The above discussion would reveal that the deceased even after the receipt of the injuries on the

otta of Bhawani Doodhghar walked the distance of 57 feet and came to the house of PW-1. The deceased even after receipt of injuries could not only come upto the house of PW-1 but, was in a position to communicate with PW-1 and PW-3 and PW-7. As far as the evidence of PW-1 is concerned, he has implicated accused no.1 and in the cross-examination confronted with his previous statement which omissions have been proved through the evidence of I.O., sufficiently establish the involvement of accused no.2 also as the evidence disclosed the condition of deceased was not such though seriously injured that he was not in a position to talk with PW-1, PW-3 and PW-7 and there is no reason to disbelieve PW-3 and PW-7 that deceased did name accused nos.1 and 2 as the assailants in the incident inflicting blows on him while he was sleeping on the otta of Bhawani Doodhghar.

12. The evidence of PW-4 Tolaram suggests that he is having his lorry of eggs and matan opposite Ajmeri Sweets shop. That on 7.10.1993 at about 11.00 O'clock in the night Narandas had come to the lorry of the witness for having the snacks of eggs and matan; that at that time Ramesh Bhil also come at the lorry of the witness for taking snacks; that Narandas had asked Rameshbhai to give money which led to the quarrel between the two. Thereafter, the witness went away to his house.

As seen above, PW-7 has stated in his evidence that Narandas had a quarrel with Ramesh Bhil at the night of 7.10.1993 and after the quarrel Narandas came to his house. The evidence of PW-11 Ganpat Balusinh, PSO, Naroda Police Station suggests that he was on duty from 20.00 hours on 7.10.1993 to 8.00 hours of 8.10.1993; that at about 2.30 a.m. on 8.10.1993 complaint filed by Ramesh Bhil came to the witness after registration and the same was entered in police station diary as C.R.No.240 of 1993. Thus, it is established that the quarrel did take place at about 11.00 O'clock in the late evening of 7.10.1993 between deceased Narandas and Ramesh Bhil as deposed by PW-1 and PW-4 and the quarrel led to the filing of complaint which is at Exh.51 registered as C.R.No.240 of 1993 in Naroda Police Station as suggested from the evidence of PW-11. Thus, the motive for committing the offence is the incident of quarrel which took place at about 11.00 O'clock night on 7.10.1993 between deceased Narandas and Ramesh Bhil.

13. Exh.49 is the discovery panchnama. Perusal of Exh.49 is the discovery panchnama. Perusal of the same suggests that in presence of panchas accused no.1 discovered one knife of marun colour with yellow colour

metal handle and accused no.2 in presence of panchas discovered one knife with yellow metal and wooden handle. Both these weapons have been recovered vide panchnama Exh.49. Exh.22 is the report of the FSL. Report of the serologist suggests that muddamal article nos.15 and 16 two knives contained human blood of "B" group. It is also suggested that article nos.11 and 13 are one shirt and one open shirt respectively of both these accused persons and both are found to contain human blood of "B" group. The sample blood taken from the place of incident as per Exh.27 was found to be human blood of "B" group, whereas the clothes of the accused and the muddamal weapons discovered by the accused no.1 and 2 are also found to contain human blood of "B" group which tallies with the blood group of the deceased.

14. The medical evidence Exh.20 as well as the report of the FSL, Exh.22 as regards the blood of the deceased tallying with the blood found on the otta of Bhawani Doodhghar, clothes of the accused as well as the weapons discovered by accused nos.1 and 2 lend sufficient corroboration to the evidence of PW-1, PW-3 and PW-7.

15. In view of above, we are of the opinion that the learned trial Judge has justifiably, on appreciation of evidence, reached finding of guilt against accused nos. 1 and 2 i.e. appellants of both these appeals and we do not find any interference called for in the conviction recorded against accused nos.1 and 2 and the sentenced imposed on them.

16. In the result, both these Criminal Appeals are dismissed. The conviction recorded and sentence imposed against original accused no.1 - Ramesh Harjibhai Bhil (appellant in Criminal Appeal No.144 of 1996) and conviction recorded and sentence imposed against original accused no.2 Shohan @ Shatti Ramsing Marwadi (appellant in Criminal Appeal No.1148 of 1995) by the trial Court are confirmed.

(N.G.Nandi,J.)

(M.C.Patel,J.)

(vipul)